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QUESTION OF THE REALIZATION IN ALL COUNTRIES OF THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS CONTAINED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND IN THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, AND STUDY OF SPECIAL PROBLEMS WHICH THE DEVELOPING COUNTRIES FACE IN THEIR EFFORTS TO ACHIEVE THESE HUMAN RIGHTS

Human rights and the environment

Report of the Secretary-General prepared in accordance with Commission resolution 1995/14

Addendum

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Introduction

1. In its resolution 1995/14, the Commission on Human Rights requested the Secretary-General to submit to it, at its fifty-second session, a report containing the opinions of Governments, specialized agencies and intergovernmental and non-governmental organizations on the issues raised in the report of the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on human rights and the environment (E/CN.4/1994/Sub.2/9).

2. This addendum contains the comments received after the preparation of the Secretary-General's report (E/CN.4/1996/23).

I. COMMENTS RECEIVED FROM STATES

State of Kuwait

[Original: Arabic]
[13 December 1995]

1. The State of Kuwait has always fully shared the international community's concerns on the subject of the environment. Kuwait was among the first countries to accede to the United Nations Conference on the Human Environment of 1972 (Stockholm Declaration). Since that time, like all other countries of the world, it has celebrated World Environment Day every year on 5 June, a date which coincides with the anniversary of the inauguration of that Conference. Kuwait endorsed all the principles set forth in the Stockholm Declaration. In June 1975, it established its own Higher Commission for Environmental Protection and is diligently endeavouring to find appropriate solutions to environmental problems in such a way as to ensure a healthy environment for all.

2. In chapter II, the Special Rapporteur defines the close relationship between development - recognized as a human right by several international texts - and the environment and emphasizes that the indivisible and interdependent nature of all human rights constitutes the basis of the links between the right to development and the right to the environment.

3. The Special Rapporteur points out that poverty and underdevelopment have an adverse effect that causes serious damage to the environment and, consequently, impedes realization of the fundamental rights of the individual and of peoples. She also describes the effect of external factors such as the structure of international relations and, in particular, the debt burden that might become an insurmountable obstacle to the achievement of sustainable development. In that connection, the Special Rapporteur refers to the conclusions of the Earth Summit held at Rio de Janeiro in 1992 in which numerous principles were adopted and during which the idea of partnership, based on the notion of participatory democracy at the national and international levels, was launched. On that occasion, the State of Kuwait drew attention to the urgent problems of development, described its position in that regard, as well as its far-sighted policy of assisting needy countries through cancellation of the debts of the poorest among them and, finally, called upon all countries of the world to take the measures needed to promulgate legislation under which deliberate damage to the environment would be regarded as equivalent to a crime against humanity, the perpetrators of which should be punished severely.

4. The Special Rapporteur then emphasizes the extreme importance of protecting the environment during periods of armed conflict, as required by the Stockholm Declaration of 1972, the World Charter for Nature and numerous international instruments concerning that question, particularly the 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, relating to the Protection of Victims of International Armed Conflicts (Protocol I). That Protocol contains two provisions concerning protection of the environment which prohibit the use of methods or means of warfare which are intended to cause damage to the environment, thereby prejudicing the health or survival of

the population. In that connection, it should be noted that the State of Kuwait is a party not only to the above-mentioned Protocol, but also to numerous international conventions concerning international humanitarian law. The Special Rapporteur stresses that the environment must be protected in wartime in order to avert ecological disasters and, in that regard, refers to the Iraq-Iran war, the conflict in former Yugoslavia and the war that broke out in the Gulf region following Iraq's invasion of Kuwait. During that war, Kuwait was the victim of an extremely serious disaster from which present generations are still suffering and the effects of which will be felt by future generations.

5. The Special Rapporteur also stresses the importance of cultural rights and their close relationship with the environment. It should be noted that the State of Kuwaiti is playing a leading role in the affirmation of all those rights. The Kuwaiti Constitution guarantees numerous other rights, such as the right to education, freedom of opinion, inviolability of private dwellings, work, freedom of association and equality of rights and obligations without any distinction. It should also be noted that, in annex III to the report (Developments in national legislation and practices), the Special Rapporteur lists the States whose Constitutions contain provisions relating to the environment. Unfortunately, Kuwait is not mentioned therein even though it was among the first States to include such provisions in their Constitutions. The State of Kuwait is a pioneer in the field of environmental legislation and has also acceded to numerous international conventions concerning environmental protection.

6. It is noteworthy that the State of Kuwait organized a Regional Conference of Plenipotentiaries on the Protection and Exploitation of the Marine Environment and Coastal Regions, which was held at Kuwait from 10 to 23 April 1978. The participants (the States of the Arabian Gulf) adopted the Regional Convention for Cooperation on the Protection of the Marine Environment from Pollution of 1978 (Kuwait Convention) and the Protocol concerning Regional Cooperation in Combating Pollution by Oil and Other Harmful Substances in Cases of Emergency. Following the adoption of that Convention, the Kuwait-based Regional Organization for the Protection of the Marine Environment was established in 1979. Other protocols, namely the Protocol concerning Marine Pollution Resulting from the Exploration and Exploitation of the Continental Shelf of 1989 (Kuwait Protocol) and the Protocol concerning Pollution of Telluric Origin of 1990, were subsequently adopted. All the above clearly demonstrates the leading role that Kuwait is playing within the framework of the efforts that are being made to ensure a healthy, safe and viable environment.

7. Many of the principles relating to the environment and human rights that are set forth in the report are incorporated in the Kuwaiti Constitution of 1962 and it can therefore be affirmed that, in this regard, the Kuwaiti authorities were largely in advance of their time. Reference should also be made to the numerous national laws concerning environmental protection which have been adopted by the Kuwait legislature, as well as all the conventions and international protocols to which Kuwait has acceded.

8. Although he has devoted enormous efforts to the formulation of the above-mentioned principles, the Special Rapporteur failed to address a highly

important question that merits the attention of the entire international community, namely the human rights situation in periods of armed conflict, particularly since the maintenance of international peace and security constitutes one of the fundamental aims of the United Nations. Moreover, the right to peace is recognized in the Universal Declaration of Human Rights. Given the close relationship between that right, the environment and mankind, and being aware that armed conflicts can prove highly prejudicial to human beings, the Special Rapporteur should have included that right in his draft declaration of principles, particularly since it is enshrined as an essential principle in numerous rules of international law.

9. In conclusion, Kuwait wishes to emphasize that it is important that all the competent organizations, committees, working groups and special rapporteurs concerned with human rights should highlight the environmental problems which affect those rights and can lead to violations. Those problems should be examined thoroughly with a view to finding solutions thereto, formulating an overall concept of the question and making practical recommendations that can be applied by all the parties concerned at all levels, the aim being to enable all persons to enjoy all their rights, particularly the right to live in a healthy, safe and ecologically sound environment.

Mexico

[Original: Spanish]
[5 December 1995]

1. The study is generally comprehensive and demonstrates clearly the relationship between human rights and the environment, as well as the interdependence and indivisibility of those rights.

2. The study was conducted on the basis of the concepts laid down in the main international human rights instruments, to which Mexico is a party, and of the various international instruments on the environment, in particular the Rio Declaration and Agenda 21, both of which were signed by Mexico.

3. In general, the position adopted by the Special Rapporteur on the relationship between human rights and the environment is shared by Mexico. The study highlights the importance of combating poverty to achieve genuinely sustainable development, the sovereignty of States over their natural resources, shared but separate responsibility and the "polluter pays" principle.

4. The section on indigenous communities, however, raises a problem as far as Mexican legislation is concerned. The Special Rapporteur calls for observance of the possession of land and natural resources by indigenous communities. In Mexico, however, natural resources are the property of the nation.

5. In the preamble to the draft principles on human rights and the environment, it is stated that human rights violations lead to environmental degradation and that environmental degradation leads to human rights violations. This statement is unbalanced in that, while it is possible that

the lack of a satisfactory environment might create health, nutritional and other problems, it is difficult to see how human rights violations could effect the environment.

6. In Part I, paragraph 3, it is stated that "all persons shall be free from any form of discrimination in regard to actions and decisions that effect the environment". This assertion would seem ambiguous, in addition to which, in Spanish, it is drafted in the negative.

7. In Part II, paragraph 8, in which it is stated that "all persons have the right to safe and healthy food and water adequate to their well-being", the wording is inappropriate. A better formulation might be "... food and water necessary for their well-being". In Part II, paragraph 11 (a), it is stated that "all persons have the right not to be evicted from their homes or land for the purpose of, or as a consequence of, decisions or actions affecting the environment, except in emergencies or due to a compelling purpose benefitting society as a whole and not attainable by other means". This idea is valid in principle, but other factors such as the implementation of infrastructure projects and steps taken to improve the quality of life of individuals which involve their relocation to other areas for reasons of personal safety should be taken into account.

8. In Part II, paragraph 14, it is stated that "indigenous peoples have the right to control their lands, territories and natural resources and to maintain their traditional way of life. This includes the right to security in the enjoyment of their means of subsistence". As mentioned earlier, our national law stipulates quite clearly that natural resources are the property of the nation, so that this idea is not acceptable as far as Mexico is concerned.

9. In Part V, paragraph 25, which states that "in implementing the rights and duties in this Declaration, special attention shall be given to vulnerable persons and groups", it would be advisable to set out some general principles regarding vulnerable groups, given the differences between such groups from one country to another.

10. Finally, it should be emphasized that most of the precepts contained in the study and the draft principles are embodied in the Rio Declaration and Agenda 21, Principle 1 of which states "Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature".

11. In general, the principles of Agenda 21 cover the main aspects of the relationship between human rights and the environment, such as health and the participation of vulnerable groups, such as women, young people and workers. In any event, a careful review could be made of Agenda 21 and other international instruments to determine the extent to which they take account of human rights and how a human rights-oriented approach could contribute to the practical application of principles relating to human rights and the environment. One example is the Convention on Biological Diversity which refers to the protection of the rights of indigenous communities to their environment.

12. The questions of human rights and the environment are extensively regulated by a number of international legal instruments, and the proposed draft principles on human rights and the environment would entail setting up a legal framework which would seem unnecessary. Accordingly, the Special Rapporteur's recommendation to set up a coordination centre within the United Nations Centre for Human Rights should be given careful consideration to avoid creating unnecessary bureaucratic structures. In any event, there must be proper coordination between the Commission on Human Rights and the Commission on Sustainable Development.

Holy See

[Original: French]
[11 January 1996].

1. The introduction to the study (paras. 1-5) establishes an interlinkage between human rights and revolt against oppression. Although the recognition of human rights in effect makes it possible to establish a legal framework that provides people with adequate means of recourse without the need to resort to revolt, such an approach remains defective. It totally disregards the fact that the human person, by its very nature, has inalienable rights, as well as the corresponding obligations.

2. Paragraph 21 states that the moral principle of environmental protection is not solely a concern of this day and age, since it may also be found in the precepts of Islam, on which Abu Bakr as-Siddiq is quoted. It is regrettable that the author did not see fit to mention, at the same time, the texts of Deuteronomy, for example, on the subject of the sabbath and jubilee rest periods. Similar requirements can be found, moreover, in the teachings of all the major religions.

3. In general, the text does not deal directly with questions of population from the standpoint of its control. However, the last sentence of paragraph 112 is far from accurate. In fact, the text acknowledges the existence of population pressures, from which it infers the inevitability of States vying with each other for resources essential for the survival of their populations.

4. Although the words "right to life" in the text (paras. 172-175) do not fully coincide with the Catholic concept that necessarily covers the right to life of an unborn child, the affirmation of such a right seems to be positive and leaves the possibility of broadening the concept.

5. Reference is made to Islam and to antique religions (Introduction, para. 1); explicit reference should also have been made to Judaism and Christianity on the subject of the protection and reasonable control of nature.

6. The Holy See notes with satisfaction the strong affirmation of the right to life (paras. 138-154 and 172-174). In our view, that radical approach should also explicitly cover the right to life of the unborn child and environmental damage to the foetus.

7. The need to protect the traditional lands and sacred sites of indigenous peoples is highlighted (Annex II, para. (e)); this should also be explicitly extended to the sacred sites of all religions.

Federal Republic of Yugoslavia

[Original: English]
[22 December 1995]

1. The final report on human rights and the environment contained in document E/CN.4/Sub.2/1994/9 prepared by Ms. Fatma Zohra Ksentini, Special Rapporteur of the Sub-Commission, provides a general and comprehensive insight into the relationship between human rights and the environment. In our opinion it would be useful, however, to supplement it with the following concrete additions.

2. In chapter II, section B, entitled "Right to development", insert the basic principle of sustainable development (principle 3 of the Rio Declaration on Environment and Development), namely that the right to development must be exercised in order to meet equally the needs of development and the environment of the present and future generations.

3. In annex II, entitled "Draft principles on human rights and the environment", section 1, paragraph 2, insert a subparagraph 2, to read: "It is a natural right of man, as part of nature, to use natural resources as a rational being to the extent and in a way in which the natural order will not be essentially changed or the existence of these resources will not be threatened, regardless of needs, well-being or pleasure."

4. In section IV, paragraph 24, insert a subparagraph 2 to read: "Decisions cannot be made at the international level which could create the danger of denying or restricting the inalienable rights of man to a healthy environment and to protecting and improving the environment, including other rights that belong to him under international law and legal standards."

5. In annex III, "Review of constitutional solutions and national legislations", include references to the constitutional, legal and judicial aspects of environmental protection in the Federal Republic of Yugoslavia.

6. The Constitution of the Federal Republic of Yugoslavia proclaims the right of man "to a healthy environment and timely information about its condition". It is further provided that "It is everyone's duty to protect the human environment and make use of it in a rational manner" and that "the State shall be charged with maintaining a healthy human environment and to this end shall prescribe the conditions and manner of the performance of economic and other activities". (Art. 52 of the Constitution of the Federal Republic of Yugoslavia, sect. II, "Freedoms, rights and duties of man and the citizen".) In this way, the human right to a healthy environment is given special importance, broader than that provided within the context of human rights, and a legal basis for the establishment of a single environmental protection system is created. (Art. 77 of the Constitution of the Federal Republic of Yugoslavia, art. 72 of the Constitution of the Republic of Serbia and arts. 1 and 65 of the Constitution of the Republic of Montenegro.)

7. The system of legal norms in the field of environmental protection and improvement in Yugoslavia is based on the constitutional and legal foundations comprising a great number of laws (over 150) and other regulations (over 100) at all levels (federal, republican, local). In accordance with relevant constitutional provisions, the right to a healthy environment in the Federal Republic of Yugoslavia is realized as one of the basic human rights and conditions for sustainable development within the environmental protection policy established in the resolution on environmental policy in the Federal Republic of Yugoslavia (1993) and the resolution on the policy for the preservation of biodiversity in the Federal Republic of Yugoslavia (1993). At the federal level, a basic environmental protection bill has been prepared with specific norms, measures and instruments for environmental protection, assurance of the human right to a healthy environment and for environmental protection of importance for the Federal Republic of Yugoslavia and the international community.

II. COMMENTS PRESENTED BY NON-GOVERNMENTAL ORGANIZATIONS

Sierra Club Legal Defense Fund

[Original: English]
[18 December 1995]

1. Ms. Ksentini's final report presents an historic opportunity for the international community to address the human impact of environmental degradation. The Commission on Human Rights, as the principal human rights organ of the United Nations, has a solemn obligation to take advantage of this opportunity.

2. The year and a half since Ms. Ksentini submitted her final report to the Sub-Commission has produced a spate of troubling examples of the close relationship between human rights and the environment. The Nigerian Government's execution of playwright and environmental activist Ken Saro-Wiwa, the Chinese Government's determination to press ahead with the enormously destructive Three Gorges Dam project, the French Government's resumption of nuclear testing in the South Pacific, and the United States based Freeport McMoran, Inc.'s environmentally and socially destructive gold mining operations in Indonesia are emblematic of the widespread connections between human rights and environmental degradation. These and countless other human rights and environmental tragedies confirm the need for the international community and the Commission on Human Rights to take affirmative action to address the issues raised in Ms. Ksentini's final report.

3. International human rights principles guarantee a broad array of civil, cultural, economic, political and social rights. Destruction of the environment in many cases infringes those rights. Conversely, human rights abuses in many cases lead to the destruction of the environment. Because of this linkage, the Sierra Club Legal Defense Fund, working with several other non-governmental organizations, in 1989 launched an initiative at the Sub-Commission to gain formal legal recognition of the connections between human rights and the environment.

4. In May 1994, the Legal Defense Fund, in cooperation with the Association mondiale pour l'école instrument de paix and the Société suisse pour la protection de l'environnement, and on behalf of Ms. Ksentini, organized and conducted a meeting of experts on human rights and the environment at the Centre for Human Rights in Geneva. The Geneva group of experts produced the draft declaration of principles on human rights and the environment, the first international instrument comprehensively to address the environmental dimension of recognized human rights. Ms. Ksentini included the draft declaration as an annex to her final report.

5. The draft declaration and the body of Ms. Ksentini's final report illustrate a progression from consideration of a new "right to environment" to recognition of the environmental dimension of established human rights. For example, the right to life includes the right to be free of environmental conditions that endanger life; the right to health includes the right to live and work in an environment that does not pose a threat to human health; the right to housing incorporates the right to housing in environmentally sound

conditions; the right to information includes the right to environmental information; freedom of speech and opinion includes the right to hold and express opinions and information regarding the environment; the right to education includes the right to environmental education; the right to participate includes the right to participate in decisions that affect the environment; and the right to effective remedies includes the right to remedies for environmental harm.

6. Environmental human rights also incorporate the right to freedom from discrimination in the protection and enjoyment of all other rights, the rights of future generations and the rights of indigenous peoples. Moreover, the rights imply duties and responsibilities that apply to individuals, groups, States, international organizations and transnational corporations to protect and preserve the environment and to respect and ensure environmental human rights.

7. Ms. Ksentini's final report confirms the importance of and legal basis for environmental human rights and signals the need for the international community to proceed to the next phase on environmental human rights. The next phase involves development of universal standards and establishment of appropriate procedures to facilitate the realization of environmental human rights for all.

8. The lack of a focused procedure for developing, implementing and enforcing environmental human rights impedes their realization. Adoption of Ms. Ksentini's recommendations - to appoint a thematic rapporteur on human rights and the environment at the Commission of Human Rights, and to use the draft declaration of principles on human rights and the environment as the basis for adopting "a set of norms consolidating the right to a satisfactory environment" - should fill the void.

9. A special rapporteur of the Commission on Human Rights on human rights and the environment would provide a focal point for the study, investigation, examination and resolution of environmental human rights problems and for the further development of universal standards of environmental human rights. No other United Nations organ concerned with the environment is designed or equipped to provide redress for individual victims of environmental evils. United Nations environmental work through the United Nations Environment Programme, the United Nations Development Programme, the World Health Organization, the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization, the International Labour Organization and other agencies has contributed to the emergence of environmental standards, but none of those bodies provides an enforcement mechanism for correction of environment-related human rights abuses.

10. Not every environmental problem implicates human rights, and not everyone that does implicate human rights belongs before the Commission on Human Rights, but the Commission must not shirk its responsibility to deal with situations and issues that are amenable to improvement through a carefully crafted human rights procedure.

11. The draft declaration of principles on human rights and the environment represents a major step towards the formulation and adoption of a General Assembly resolution or other international instrument on human rights and the environment. The Commission on Human Rights has already recognized the draft declaration as a significant standard-setting activity (E/CN.4/1995/81).

12. The Commission should continue developing and strengthening the principles in the draft declaration. Environmental human rights standards should draw from and contribute to developments in domestic and international institutions. The Commission on Human Rights, through a thematic rapporteur on human rights and the environment, should be able to facilitate that process and disseminate and promote the standards that emerge. Environmental human rights should figure prominently in the work of international human rights forums, international environmental forums and in relevant sectors of domestic institutions.

13. The final report of Ms. Ksentini places the international community and the Commission on Human Rights at a crossroads in their treatment of the connections between human rights and the environment. The Legal Defense Fund urges the Commission to take full advantage of this important initiative and guide it along the path to increased environmental and human rights protection. Recognition of environmental human rights is doctrinally sound, morally urgent and profoundly utilitarian, and the Commission on Human Rights has a moral and legal mandate to establish a procedure to promote and protect these rights.